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THE HONORABLE WHITMAN L. HOLT

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In the Matter of

EASTERDAY RANCHES, INC., *et al.*,¹

Debtors.

No. 21-00141-WLH11

RESPONSE BY CREDITOR
PHI FINANCIAL SERVICES TO
EASTERDAY FARMS' MOTION
FOR ORDER AUTHORIZING &
APPROVING STIPULATION

COMES NOW, Creditor PHI FINANCIAL SERVICES, INC., by and through its attorneys of record, LARSON BERG & PERKINS PLLC and Paul M. Larson, and responds to Debtor EASTERDAY FARMS' MOTION FOR ORDER AUTHORIZING & APPROVING STIPULATION (Dkt. No. 361) ("Motion") as follows:

I. BACKGROUND INFORMATION

1. PHI Financial Services, Inc. ("PHI Financial") understands the Motion as seeking, *inter alia*, authorization to dispense by sale of 42.5 thousand (42,500) tons of potatoes.
2. In March 2020, PHI Financial entered into a financing agreement with

¹ The Debtors and their cause numbers in this consolidated proceeding are Easterday Ranches, Inc. (21-00141-WLH11) and Easterday Farms, a Washington General Partnership (21-0176-WLH11).

Debtor Easterday Farms for a line of credit with a maximum loan amount of \$4,000,000 (hereinafter, "Agreement"). A true and correct **copy of that Agreement** is appended to this filing as **Attachment A**.

3. Pursuant to that Agreement, Easterday Farms granted a PHI Financial a security interest in "all of [its] *growing crops*, inventory crops, farm products, accounts receivable, documents and instruments, warehouse receipts, general intangibles and accounts, and *all proceeds of the foregoing*, whether now owned or after acquired" Attach. A at 2 (emphasis added).

4. Under the Agreement, PHI Financial could not perfect its security interest until Easterday Farms defaulted on the loan. *Id.*

5. Under the Agreement, the maturity date for the loan was December 1, 2020. *Id.* Failure to make full payment by the date constituted one form a default under the Agreement. *Id.*

6. Easterday Farms did not make full payment on its outstanding obligations by the maturity date. Pursuant to the security Agreement, PHI Financial perfected its security interest by filing a UCC-1 Financing Statement on January 4, 2021. A true and correct copy of that **financing statement** is appended to this filing as **Attachment B**.

7. The financing statement identified as collateral "all crops grown or to be grown in any crop year, whether harvested or unharvested . . ."

II. STATEMENT OF POSITION

8. PHI Financial maintains it is a secured creditor by virtue of its security agreement and UCC-1 statement filed.²

9. PHI Financial recognizes that the merits of its claim of a perfected security interest are a matter to be determined at a future date.

10. PHI Financial does not contest the motion for sale of the potatoes to Lamb Weston, nor does it contest the Easterday Farms' proposed rejection of the potato contracts for future years.

11. However, PHI Financial notes that the proposed sale and contract rejection do not provide any details as to (a) the proposed sale price for the potatoes, (b) the price for such potatoes on the open market, and (c) proposed adequate protections for creditors who hold an interest in the collateral.

12. Given (a) its security interest, (b) the proposed rejection of the future potato contracts between Easterday Farms and Lamb Weston, (c) the lack of specific details on the comparative sales price of the collateral potatoes, and (d) the fact several secured creditors may have an interest in the same collateral potatoes, PHI Financial asks this Court include a provision in its order setting forth adequate protections for the secured creditors.

13. PHI Financial believes adequate protections can be achieved if this Court, pursuant to its authority under 11 U.S.C. § 361(2) and 11 U.S.C. § 363(e),

² A "security interest" is a "a lien created by an agreement." 11 U.S.C. § 101(51).

1 imposes the following conditions on the sale: (a) Easterday Farms will
2 keep clear records of the proceeds from the sale; (b) Easterday Farms
3 will avoid co-mingling wherever practical; and (c) creditors whom are
4 found to have a security interest in the potatoes will have a super-
5 priority lien on the Lamb Weston potato sale proceeds.

- 6 14. PHI Financial believes this proposal will ensure the multitude of potential
7 creditors with a security interest in the potato collateral being sold will
8 obtain some recompense from the resulting proceeds.

9 **III. REQUESTED RELIEF**

- 10 15. If this Court approves the stipulation, PHI Financial asks it to enter an
11 order: (a) requiring Easterday Farms to keep clear records of the potato
12 proceeds; (b) requiring Easterday Farms to avoid co-mingling wherever
13 practical; and (c) granting creditors whom are later found to hold a
14 security interest in the potato collateral a super-priority lien on the Lamb
15 Weston potato sale proceeds.

16 Dated this 22nd day of March, 2021.

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18 By: /s/ Paul M. Larson

19 **LARSON BERG & PERKINS PLLC**

20 Paul M. Larson, WSBA No. 6010

21 *Attorney for the PHI Financial Services, Inc.*

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CERTIFICATE OF SERVICE

I certify that on March 22, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System which in turn automatically generated a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF System in this case. The Notice of Electronic Filing for the foregoing identifies all recipients.

/s/ Paul M. Larson
Paul M. Larson